

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR.JUSTICE K.HARILAL**

**THURSDAY, THE 28TH DAY OF MAY 2015/7TH JYAISHTA, 1937**

**Crl.Rev.Pet.No. 639 of 2015 ()**  
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**AGAINST THE JUDGMENT IN CC 831/2012 of JUDICIAL FIRST CLASS MAGISTRATE-IV,  
KOZHIKODE DATED 26-04-2014**

**AGAINST THE JUDGMENT IN CRA 338/2014 of ADDL. SESSIONS COURT - V,  
KOZHIKODE DATED 19-03-2015**  
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**REVISION PETITIONER(S)/APPELLANT/ACCUSED :**  
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**SAID THAHA BAFQUI, AGED 47 YEARS,  
S/O.SAID ABDUL KHADER BAFQUI, HILAL MANZIL  
MUBARAK ROAD, KOYILANDY, KOZHIKODE.**

**BY ADV. SRI.P.V.KUNHIKRISHNAN**

**RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE :**  
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- 1. M/S.HYSON HERITAGE,  
BANK ROAD, KOZHIKODE,  
REPRESENTED BY ITS POWER OF ATTORNEY HOLDER  
KARUN RADHAKRISHNAN, S/O.RADHAKRISHNAN-673 004.**
- 2. STATE OF KERALA,  
REPRESENTED BY THE PUBLIC PROSECUTOR  
HIGH COURT OF KERALA, ERNAKULAM, KOCHI-682 031.**

**R2 BY SRI.JIBU P. THOMAS, PUBLIC PROSECUTOR**

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR  
ADMISSION ON 28-05-2015, THE COURT ON THE SAME DAY PASSED  
THE FOLLOWING:**

**AMV**

K.HARILAL, J.

.....  
Crl.R.P.No. 639 of 2015 ()

.....  
Dated this the 28<sup>th</sup> day of May, 2015

ORDER

This Revision Petition is filed challenging the concurrent findings of conviction entered and the sentence imposed on the Revision Petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the N.I. Act') in Criminal Appeal No.338 of 2014 on the files of the Additional Sessions Judge-V, Kozhikode. The above appeal was filed challenging the judgment finding that the Revision Petitioner is guilty of the said offence, passed in C.C.No.831 of 2012 on the files of the Judicial First Class Magistrate Court-IV, Kozhikode. According to the impugned judgment, the Revision Petitioner is sentenced to undergo simple imprisonment for three months to pay a fine of Rs.1,15,000/- under Section 138 of the NI Act, in default of payment of fine, he shall undergo simple imprisonment for three months. If fine amount is realised it shall be paid a compensation to the complainant.

2.The learned counsel for the Revision Petitioner reiterated the contentions which were raised before the courts below and got rejected concurrently. The learned counsel urged for a re-appreciation of evidence once again, which is not permissible under the revisional jurisdiction unless any kind of perversity is found in the appreciation of evidence. The Revision Petitioner failed to point out any kind of perversity in the appreciation of evidence or illegality or impropriety in the findings whereby the trial court convicted him.

3.The courts below had concurrently found that the complainant/1<sup>st</sup> respondent had successfully discharged initial burden of proving execution and issuance of the cheque; whereas the Revision Petitioner had failed to rebut the presumption under Section 118(a) and 139 of the N.I. Act which stood in favour of the 1<sup>st</sup> respondent. So also, it is found that the debt due to the 1<sup>st</sup> respondent was a legally enforceable debt and Ext.P3 cheque was duly executed and issued in discharge of

the said debt.

4.This Court is satisfied that the courts below had meticulously evaluated the evidence on record. I do not find any kind of illegality or impropriety in the said findings or perversity in appreciation of evidence, from which the above findings had been arrived. Therefore, I am not inclined to re-appreciate entire evidence once again and I confirm the concurrent findings of conviction.

5.At last, the learned counsel for the Revision Petitioner submits that the sentence imposed on the Revision Petitioner is disproportionate with the gravity and nature of the offence contemplated under Sec.138 of the N.I. Act. The learned counsel further sought for some time to pay the compensation as he is unable to raise the said amount forthwith due to paucity of funds.

6.The Supreme Court, in the decision in Kaushalya Devi

Massand v. Roopkishore (AIR 2011 SC 2566), held that the offence under Section 138 of the N.I. Act is almost in the nature of civil wrong which has been given criminal overtone, and imposition of fine payable as compensation is sufficient to meet the ends of justice. Further, in Vijayan vs. Baby (2011(4) KLT 355), Supreme Court held that the direction to pay the compensation by way of restitution in regard to the loss on account of the dishonour of the cheque should be practical and realistic. So, in a prosecution under Section 138 of the N.I. Act, the compensatory aspect of remedy should be given much priority over punitive aspect.

7. Having regard to the nature and gravity of the offence, in the light of the decisions quoted above and submission made at the Bar, expressing willingness to pay the compensation, I am inclined to grant five months time to pay the compensation. In supersession of the substantive sentence of imprisonment for three months imposed by the trial court on the revision

petitioner and confirmed by the appellate court will stand reduced and modified to simple imprisonment for one day till rising of the court. Consequently, this Revision Petition will stand disposed of subject to the following terms.

- i. The Revision Petitioner shall undergo simple imprisonment for one day till rising of the court.
- ii. The Revision Petitioner shall pay a fine of ₹1,15,000/- (Rupees One lakh fifteen thousand only) within a period of five months from today and the same shall be given to the complainant as compensation under Section 357(1) of Cr.P.C.
- iii. The Revision Petitioner shall appear before the Trial Court to suffer substantive sentence of simple imprisonment as ordered above on or before 28.10.2015 with sufficient proof to show payment of fine.

iv. In default, the Revision Petitioner shall undergo simple imprisonment for a period of three months.

The Criminal Revision Petition is disposed of accordingly.

Sd/-  
K.HARILAL,  
JUDGE.

AMV/28/05/

/TRUE COPY/

P.A.TO JUDGE